

amendments may be found, for example, at page 7, lines 23-31 and pages 10, lines 15-21 in the specification as originally filed and therefore do not constitute new matter.

Also, claim 23 has been amended to correct an obvious error and to properly depend from claim 20 rather than claim 22. Following the above amendments, claims 6, 7, 20 and 22-56 are pending in the application.

### **35 U.S.C. §112, first paragraph**

The Examiner has rejected claims 6, 7, 20 and 22-56 under 35 U.S.C. §112, first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and use the invention. The Examiner supports the rejection by stating that:

- 1.) the present claims encompass “any molecule” that may induce an immune response;
- 2.) no tumor antigens are disclosed in the specification which may be effective in the treatment of cancer;
- 3.) the present claims read on methods of treating one type of cancer with tumor antigens of another cancer type; and,
- 4.) the identification of “antigenic molecules” for use as effective agents as an immunotherapeutic composition in the treatment of cancers would not have been routine to one of ordinary skill in the art at the time the invention was made.

In addition, the Examiner cites *Falo, et al.* as representative of the state of the art at the time the application was filed and to illustrate the degree of predictability in the art. The Examiner states *Falo* teaches that there are two major hurdles that must be overcome for effective cancer vaccine development: first, tumor antigens recognized by CTLs must be identified, and second, CTL responses to the tumor antigens must be evident. Based upon the above statements, the Examiner concludes that the specification does not provide sufficient guidance for one skilled in the art to have used the invention without undue experimentation. In light of the above amendments and following remarks, Applicants respectfully disagree.

As a preliminary matter, Applicants wish to emphasize that the presently claimed invention is not a cancer vaccine *per se*, and the role of Flt3-L is more akin to an adjuvant, immunomodulator, immunopotentiator, and the like.

As described above, Applicants have amended the claims in an effort to expedite prosecution and present the claims in condition for allowance. In particular, the claims have been amended to specify that the antigen being administered is a *tumor* antigen, and therefore, do not read on “any molecule” that may induce an immune response. As such, Applicants respectfully submit that the amended claims render the Examiner’s first point moot.

Applicants respectfully traverse the Examiner’s contention that the specification does not provide sufficient guidance to enable one of skill in the art to make and use the presently claimed invention because “no tumor antigens are disclosed in the specification which may be effective in the treatment of cancer.” Applicants note that a large number of tumor antigens were well known in the art at the time the application was filed and that the present specification need not teach what was already known in the art. For example, one of skill in the art would be familiar with known tumor antigens such as overexpressed Her-2/neu (breast, ovarian and other carcinomas); MAGE, MART, BAGE, GAGE and gp100 (proteins expressed in melanomas and many carcinomas); PSA (Prostate Specific Antigen – prostate carcinomas); and CEA (Carcinoembryonic antigen expressed on many tumors). In support of this fact, Applicants direct the Examiner’s attention to Table 1 at page 123 of the enclosed reference “Cancer Vaccines: Novel Approaches and New Promise”, Minev, B., et al., *Pharmacol. Ther.*, Vol. 81, No. 2, pp. 121-139, 1999, which provides a *partial* list of human tumor antigens *recognized by T lymphocytes*, their MHC restriction, peptide epitope and tumor type, as well as *dated references for each tumor antigen*. Throughout the article, the authors discuss various studies showing tumor-specific CTL immune responses for many of the tumor antigens. Furthermore, the *Falo* reference cited by the Examiner states at page 1041, second column that “... significant progress has been made in defining the peptides recognized by tumor-specific CTLs.” and that “[p]eptide antigens have been defined for several human tumors and MHC class I alleles”, and proceeds to list numerous examples.

Clearly, defined tumor antigens with known CTL epitopes were well known in the art. It is certain that one of skill in the art of cancer vaccines, adjuvants and other related fields would be familiar with published tumor antigens and would readily apply this knowledge in making and using the presently claimed invention. Applicants note that a patent need not teach, *and preferably omits*, what is well known in the art (*In re Buchner*, 929 F.2d 660, 661, 18 USPQ2d1331, 1332 (Fed. Cir. 1991)). Therefore, Applicants respectfully submit that the present specification is fully enabling to the skilled artisan. As such, Applicants respectfully request the rejection under 35 U.S.C. §112, first paragraph be properly withdrawn.

The Examiner's third point states that the present claims read on methods of treating one type of cancer with tumor antigens of another cancer type. While Applicants do not acquiesce to the Examiner's characterization of the claims, the claims have been amended to more clearly define the present invention in an effort to expedite prosecution and to place the claims in condition for allowance. Specifically, claims 6, 20 and 54 have been amended to specify that the tumor antigen administered to the patient is expressed in the patient's cancerous or neoplastic tissues. Support for the amendments may be found in the specification as originally filed, for example, at page 7, lines 23 to 31, which states a "vaccine is designed to trigger an immunoprotective response." Applicants submit that it is a fundamental tenet of immunology and vaccinology that an immunoprotective response is typically generated against a disease by immunizing the subject with an antigen that is immunologically relevant to the disease being treated. This was established by Edward Jenner in 1798 and has been applied consistently in the development of vaccines for such diseases such as measles, polio, hepatitis, etc, as well as cancer vaccines. Applicants submit as evidence Exhibits B, C and D, which are clinical trial protocols in which tumor antigens relevant to the cancer being treated are administered to the patients. Specifically, Exhibit B describes administering Flt3-L and melanoma tumor antigens for the treatment of melanoma; Exhibit C describes administering Flt3-L as an adjuvant in combination with a HER-2/neu antigens for the treatment of prostate cancer; and, Exhibit D is cancer vaccine protocol using Flt3-L as an adjuvant in combination with HER-2/neu tumor antigens for the treatment of breast or ovarian cancer. As such, Applicants submit that the above amendments are fully

supported by the specification as originally filed and the amended claims obviate the Examiner's basis of rejection.

The final point raised by the Examiner states that the identification of "antigenic molecules" for use as effective agents as an immunotherapeutic composition in the treatment of cancers would not have been routine to one of ordinary skill in the art at the time the invention was made. Applicants have addressed this issue in the discussion above, noting that a large number of tumor antigens were well known in the art at the time the application was filed and that the present specification need not teach what was already known. As such, one of skill in the art would not have to identify antigenic molecules for use in the presently claimed invention because tumor antigens were already identified. The Examiner is invited to review the "Cancer Vaccines: Novel Approaches and New Promise" reference which supports Applicants' statements. Furthermore, Applicants note that "[I]f a statement of utility in the specification contains within it a connotation of how to use, and/or the art recognizes that standard modes of administration are known and contemplated, 35 U.S.C. 112 is satisfied (*In re Johnson*, 282 F.2d 370, 373, 127 USPQ 216, 219 (CCPA 1960)). Applicants respectfully submit that numerous tumor antigens were well known in the art, as well as recognized modes of administration, and therefore stress that one of skill in the art would be able to make and use the present invention with minimal application of routine, established methodologies. Indeed, given that the level of ordinary skill in the relevant art is quite high, it cannot be considered undue experimentation to administer a known tumor antigen using standard methodologies in conjunction with *Flt-3-L* (as variously claimed). Thus, Applicants submit the present specification does satisfy the enablement requirement and the rejection under 35 U.S.C. §112, first paragraph may be properly withdrawn.

The Examiner states that, due to the unpredictability in the relevant art, the subject specification does not provide sufficient guidance for one skilled in the art to use the claimed invention without undue experimentation. In support of this position the Examiner cites *Falo*, which teaches, *inter alia*, that there are two major hurdles that must be overcome for effective cancer vaccine development: first, tumor antigens recognized by CTLs must be identified, and second, CTL responses to the tumor antigens must be evident. As discussed above, *Pharmacol. Ther.* teaches that many tumor antigens

recognized by CTLs had been identified at the time the subject application was filed, and that several animal models had shown the efficacy of cancer vaccines. This demonstrates the state of the art at the time the invention was made was quite advanced, and consequently, the art had a higher level of predictability than suggested by the Examiner.

Applicants' position is supported by *in vivo* experiments and clinical trials that use the claimed methods. Specifically, Exhibit A is an abstract summarizing the results of a *in vivo* study performed at the University of Washington in 1998 using Flt-3-L as a vaccine adjuvant in combination with immunization with a tumor antigen (HER2 protein). The study showed that Flt3-L, when used as the sole adjuvant in a tumor antigen-based vaccine, is a potent stimulator of an IFN $\gamma$ -producing, antigen specific T-cell response. Significantly, numerous human clinical trials using the claimed methods are currently underway. For example, Exhibit B is an excerpt from a LICR protocol for a Phase I/II clinical trial for administering Flt3-L and melanoma tumor antigens; Exhibit C describes a Phase I clinical trial of Flt3-L as an adjuvant in combination with a HER-2/neu peptide-based cancer vaccine for advanced stage prostate cancer; and, Exhibit D describes a Phase I clinical trial using Flt3-L as an adjuvant in combination with HER-2/neu peptide-based cancer vaccine and GM-CSF for breast or ovarian cancer.

Applicants submit that the fact that numerous clinical trials using the claimed methods are being conducted is compelling evidence that the art is not so unpredictable as to preclude one of ordinary skill in the art from practicing the claimed invention. In addition, such studies demonstrate that one of skill in the art would not have to perform undue experimentation to practice the claimed invention. In short, the animal studies and clinical trials demonstrate that there is a reasonable expectation of success in using the claimed invention. As such, the Examiner's position is not founded in fact and Applicants respectfully submit the rejection under 35 U.S.C. §112, first paragraph is without merit and should be properly withdrawn.

Reconsideration and allowance of pending claims 6, 7, 20 and 22-56 is kindly requested.

Respectfully submitted,



James Klaniecki  
Registration No. 38,207

Immunex Corporation  
51 University Street  
Seattle, WA 98101  
Telephone: (206) 587-0430 ext. 4145  
Facsimile: (206) 233-0644

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Box Non-Fee, Assistant Commissioner for Patents, Washington, D.C. 20231, on the date indicated below.

Date: 4/30/01 Signed: Nanci M. Kertson  
Nanci Kertson

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:

Kenneth Brasel, et al.

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VanderVegt

For: DENDRITIC CELL STIMULATORY FACTOR

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

*In the claims:*

6. (Twice amended) A method for augmenting an immune response in a patient having a cancerous or neoplastic disease, comprising the steps of administering flt3-ligand in an amount sufficient to generate an increase in the number of the patient's dendritic cells and administering an a tumor antigen to the patient, wherein the tumor antigen is expressed in the patient's cancerous or neoplastic tissues.

20. (Twice amended) A method of treating cancerous or neoplastic disease in a patient in need thereof comprising administering Flt3-L in an amount sufficient to enhance the patient's immune response to such disease and administering an a tumor antigen to the patient, wherein the tumor antigen is expressed in the patient's cancerous or neoplastic tissues.

23. (Amended) The method of claim 20 22 wherein the flt-3 ligand is soluble human flt-3 ligand.

44. (Amended) The method of claim 6, wherein the tumor antigen is in the form of a tumor cell bearing said tumor antigen is a tumor cell.

45. (Amended) The method of claim 6, wherein the tumor antigen is in the form of an isolated tumor antigen is a tumor antigen.

46. (Amended) The method of claim 6, wherein the tumor antigen is administered prior to administering Flt3-L.

47. (Amended) The method of claim 6, wherein the tumor antigen is administered concurrently with administering Flt3-L.

48. (Amended) The method of claim 6, wherein the tumor antigen is administered after administering Flt3-L.

49. (Amended) The method of claim 20, wherein the tumor antigen is in the form of a tumor cell bearing said tumor antigen is a tumor cell.

50. (Amended) The method of claim 20, wherein the tumor antigen is in the form of an isolated tumor antigen is a tumor antigen.

51. (Amended) The method of claim 20, wherein the tumor antigen is administered prior to administering Flt3-L.

52. (Amended) The method of claim 20, wherein the tumor antigen is administered concurrently with administering Flt3-L.

53. (Amended) The method of claim 20, wherein the tumor antigen is administered after administering Flt3-L.

54. (Amended) A method of treating cancerous or neoplastic disease in a patient in need thereof comprising administering Flt3-L to the patient, isolating dendritic cells from the patient, exposing the dendritic cells to ~~an~~ a tumor antigen, and administering the dendritic cells to the patient, wherein the tumor antigen is expressed in the patient's cancerous or neoplastic tissues.

55. (Amended) The method of claim 54, wherein the tumor antigen is in the form of a tumor cell bearing said antigen is a tumor cell.

56. (Amended) The method of claim 54, wherein the tumor antigen is in the form of an isolated tumor antigen is a tumor antigen.